

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 3/10/09

LEROY DICKERSON,

Petitioner,

-against-

JAMES CONWAY, Superintendent,  
Attica Correctional Facility, et al.,

Respondents.

**ORDER PURSUANT TO  
RHINES V. WEBER**

08 Civ. 8024 (RJS) (FM)

**FRANK MAAS**, United States Magistrate Judge.

This habeas petition pursuant to 28 U.S.C. § 2254 is dated August 20, 2008, was received by the Pro Se Office of this Court on August 28, 2008, and was docketed the following month. Thereafter, on January 8, 2009, Judge Sullivan referred the case to me for a report and recommendation.

Prior to the referral, the petitioner submitted a motion seeking a stay and abeyance so that he could “argue and preserve a few more state issues.” (See Docket No. 2). In his application, however, the petitioner did not indicate what those additional issues are or why they had not previously been raised in state court.

In Rhines v. Weber, 544 U.S. 269, 277 (2005), the Supreme Court declared that a stay and abeyance should be granted “only in limited circumstances.” Thus, a trial court should deny an application to stay a § 2254 proceeding if it determines there was no

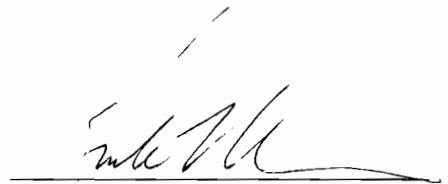
good cause for the petitioner's prior failure to exhaust his claims or the unexhausted claims are meritless. Id.

Here, as noted above, the petitioner has neither explained his prior failure to exhaust nor indicated what his new claims are. Therefore, the Court cannot determine whether the application should be granted.

The petitioner therefore is directed to submit to the Court by March 2, 2009, an explanation of (a) the claims he wishes to pursue in state court, and (b) the reasons he did not previously present those claims to the state courts. Upon the receipt of this information, the Court will consider whether a stay and abeyance is warranted.

SO ORDERED.

Dated: New York, New York  
February 9, 2009

  
FRANK MAAS  
United States Magistrate Judge

Copies to:

Hon. Richard J. Sullivan  
United States District Judge

Leroy Dickerson  
DIN # 02-A-5115  
Attica Correctional Facility  
P.O. Box 149  
Attica, New York 14011-0149